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RECORD OF ORAL HEARING
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

1 The above-entitled matter came on for hearing on Tuesday, June 14, 2011
2 commencing at 1:30 p.m., at the U.S. Patent and Trademark Office, 600
3 Dulany Street, Alexandria, Virginia, before Paula Lowery, Notary Public.

4
5 P R O C E E D I N G S

6 - - - - -
7 THE USHER: Good morning. Calendar Number 37, Appeal No.
8 2009-012922, Mr. Crew.

9 JUDGE KERINS: Good afternoon, Mr. Crew.

10 We have reviewed the file for the case. We're generally familiar with the
11 issues involved, and look forward to hearing arguments for patentability.

12 MR. CREW: Good afternoon. May it please the Board, my name is Darren
13 Crew. I'd like to discuss why the 102 rejection of Claim 1 is improper.
14 The Examiner has rejected Claim 1 under 35 USC 102 as anticipated by the
15 Johnson reference. However, that rejection is improper because Johnson
16 does not expressly or apparently describe all the features set forth in Claim
17 1.

18 In particular, Johnson does not describe the features including each line
19 supporting rail being slidably mounted on at least one orthogonal rail
20 relative to the other said line supporting rails.

21 Each line supporting rail, when slidably mounted, being slidable in a
22 direction orthogonal to the line along at least one orthogonal rail.

23 The Johnson reference was relied on for a 102 rejection. However, the
24 Johnson reference does not disclose those features.

1 JUDGE KERINS: Counsel, going back to the claim limitations you
2 just read, does that require the line supporting rails to actually be affixed yet
3 slidable with respect to the orthogonal rail?

4 MR. CREW: Affixed yet slidable?

5 JUDGE KERINS: Right, affixed, meaning that they are somehow
6 attached to each other, yet slidable.

7 MR. CREW: The line supporting railing in Claim 1 is referring to
8 Element 96. Element 96 is shown in Figure 12, and it shows -- for example,
9 in Figure 12, it shows three line supporting rails, Number 96.
10 They can be moved relative to each other along the orthogonal rails, 92 and
11 93, on the two ends. So they're slidably mounted.
12 Does that answer your question? Maybe I misunderstood.

13 JUDGE KERINS: I guess it goes maybe more to the mounted part.
14 Does that mean they're not just simply resting on something?

15 MR. CREW: That's correct. Slidably mounted -- the line supporting
16 rail 96 is slidably mounted to the orthogonal rails, rather than just resting on
17 it, or laying on it. It's actually mounted on it, and it's mounted in such a way
18 that it's slidable.
19 It's slidable in a direction orthogonal to the line. So along the orthogonal
20 rails, it's slidable in that direction.

21 JUDGE KERINS: Thank you.

22 MR. CREW: For those reasons, it's believed that the Johnson
23 reference is inadequate to disclose all of the features in Claim 1. The
24 Examiner relies on some text in the Johnson reference, but the Examiner was
25 not able to rely on drawings because the text is the only place that even

1 arguably discusses something that could correspond to the line supporting
2 rails and features relating to the line supporting rails.

3 In particular, the Examiner relied on the Johnson reference, the text in
4 Column 12 at lines 19 to 29. The features disclosed in that paragraph are not
5 shown in any drawing, so we are forced to guess at what perhaps that could
6 correspond to.

7 A careful reading of that paragraph shows that -- it talks about a non-
8 illustrated embodiment where there could be a pair of rails. The rails would
9 extend transverse to the long axis of the track that is shown in the drawings.
10 However, that still does not rise to the features shown in Claim 1. That still
11 doesn't satisfy the features of Claim 1 because the closest we can get is
12 Figure 11 of the Johnson reference.

13 That shows assembly No. 118. If additional rails are added, as discussed in
14 Column 12, they're coupled between adjacent stanchions, No. 116. In
15 Figure 10 and 11 you can see elements 116.

16 Turning back to Figure 10, if these rails, which are not shown in any
17 drawing -- these rails that are discussed in Column 12 -- if you add those
18 rails to connect elements No. 116, it still doesn't lead one of ordinary skill in
19 the art to the features disclosed in Claim 1.

20 JUDGE O'NEILL: Which features is that? That it does not lead --

21 MR. CREW: Thank you. The features I'm talking about in Claim 1
22 are each line supporting rail being slidably mounted on at least one
23 orthogonal rail relative to other of said line supporting rails. Each line
24 supporting rail, when slidably mounted, being slidable in a direction
25 orthogonal to the line along at least one orthogonal rail.

1 JUDGE O'NEILL: Counsel, would you agree or disagree that based
2 on the Examiner's findings and the Examiner's articulation that this reference
3 at least discloses rails that run transverse to the axis of the -- what do they
4 call this thing? Devices 40. Based upon that language in Column 12?

5 MR. CREW: Yes, I agree. It does disclose rails extending transverse
6 to the long axis, but the claim does a lot more than just disclose such rails.
7 The claim describes a lot of details describing those rails.

8 JUDGE O'NEILL: Okay.

9 JUDGE KERINS: Anything more?

10 JUDGE O'NEILL: No.

11 JUDGE KERINS: Judge Silverberg?

12 JUDGE SILVERBERG: No.

13 JUDGE KERINS: Thank you very much. I think we have enough
14 information to take the case under advisement.

15 MR. CREW: Can I add one other piece of information?

16 JUDGE KERINS: Certainly.

17 MR. CREW: In that paragraph in Column 12 talking about those
18 rails, it mentions that the device is adjustably mounted on a pair or rails or
19 supports.
20 They are coupled between adjacent stanchions 116, and it does not describe
21 slidably mounted. It just said adjustably mounted.
22 For example, it even talks about having a mount or a bolt which extends, and
23 it doesn't say the device is slidably mounted. That's the first thing. It doesn't
24 say slidably mounted. It just says adjustably mounted.

1 Basically, a reading of that with 102 in mind would lead to a bolt and a hole.
2 You can remove the bolt from that hole, and you could remove the rail from
3 that hole and bolt and move it to another location, but that would not be
4 slidably mounted.

5 For Section 102, there are very rigid requirements. For a 102 it's a very high
6 threshold, and this Paragraph 12 doesn't show slidably mounted.

7 Also, secondly, it doesn't show multiple rails being slidably mounted in
8 relation to each other, which is set forth in Claim 1.

9 For those reasons, the rejection is believed to be improper.

10 Thank you very much for your time.

11 JUDGE KERINS: Thank you very much, Mr. Crew.

12 (Whereupon, the proceedings at 1:38 p.m. were concluded.)

13